

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

GISELLE MCKENZIE,

Plaintiff,

v.

DOLLAR TREE STORES, INC., a Virginia
corporation, AMERICAN CONSUMER
PRODUCTS CORP, a California corporation,
KITTRICH CORPORATION, a California
corporation,

Defendants.

NO.

NOTICE OF REMOVAL OF CIVIL
ACTION

(28 U.S.C. §§ 1332 AND 1441)
(DIVERSITY JURISDICTION)

DEMAND FOR JURY TRIAL

TO: THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE UNITED
STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA:

PLEASE TAKE NOTICE THAT Defendant DOLLAR TREE STORES, INC.
("Dollar Tree") respectfully removes this action from the Superior Court of the State of
Washington in and for Pierce County, where it is currently pending, to the United States
District Court for the Western District of Washington. This Notice is submitted pursuant to 28
U.S.C. §§ 1332, 1441, and 1446. As grounds for removal, Dollar Tree states as follows:

NOTICE OF REMOVAL IS TIMELY

1. On or about May 23, 2021, Giselle McKenzie filed a complaint against Dollar
Tree, American Consumer Products Corp, and Kittrich Corporation in the Superior Court of

the State of Washington in and for Pierce County, entitled *McKenzie v. Dollar Tree Stores, Inc., et al*, Case No. 21-2-05979-3. A copy of the summons and complaint is attached as Exhibit A to this Notice. In the complaint, Plaintiff seeks to recover “her full damages in an amount to be proven at trial,” claimed to be due as compensation for personal injury caused by an allegedly defective product. Plaintiff also requests attorney fees and cost and interest.

2. On or about June 9, 2021, Plaintiff served the summons and complaint on Dollar Tree, via personal service in Dollar Tree’s home state of Virginia. Dollar Tree answered the Complaint on June 28, 2021. On or about June 23, 2021, Dollar Tree served upon Plaintiff a request for statement of damages, pursuant to RCW 4.28.360, seeking to understand the amounts in controversy in this action. On or about July 16, 2021, Dollar Tree received Plaintiff’s statement of damages. Per the statement, Plaintiff is seeking an estimated total of at least \$109,600.

Pursuant to 28 U.S.C. § 1446(a), Exhibit A consists of all process, pleadings, and orders that Dollar Tree received in this action as of the date of this Notice.

3. Pursuant to 28 U.S.C. § 1446(b), and related law, Dollar Tree filed this Notice of Removal within thirty (30) days of Plaintiff’s service of a pleading paper from which Dollar Tree could determine that the case was removable. *See Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1250 (9th Cir. 2006).

JURISDICTIONAL BASIS FOR REMOVAL – DIVERSITY JURISDICTION

4. Dollar Tree seeks to remove this case to federal court on the basis of diversity of citizenship between the parties pursuant to 28 U.S.C. § 1332.

5. For purposes of diversity jurisdiction, a corporation is “deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business” 28 U.S.C. § 1332(c)(1)

6. Plaintiff Giselle McKenzie is a Washington resident.

7. Defendant Dollar Tree is a Virginia corporation with its principal place of business in Virginia. On information and belief, Defendant American Consumer Products

1 Corp is a California corporation with its principal place of business in California. On
2 information and belief, Defendant Kittrich Corporation is a California corporation with its
3 principal place of business in California.

4 8. As none of the defendants are a citizen of Washington, there is complete
5 diversity between Plaintiff and Defendants.

6 **THE AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED**

7 9. The amount in controversy exceeds \$75,000. Per Plaintiff's statement of
8 damages, she is seeking an award of at least \$109,600.

9 10. Because Plaintiff is diverse from Defendants and the amount in controversy,
10 exclusive of interest and costs, exceeds the sum of \$75,000, this Court has original
11 jurisdiction over the claims pursuant to 28 U.S.C. § 1332.

12 11. Defendants are entitled to have this cause removed from the Superior Court of
13 the State of Washington in and for Pierce County to the United States District Court for the
14 Western District of Washington, the federal district where the state suit is pending.

15 **PAPERS FROM REMOVED ACTION**

16 12. Copies of all pleadings in the action pending in Superior Court of the State of
17 Washington for in and for Pierce County are attached hereto as Exhibit A.

18 **NOTICE TO PLAINTIFF**

19 13. Dollar Tree has served written notice of this filing on counsel for all parties to
20 this action as required by 28 U.S.C. § 1446(d).

21 **NOTICE TO STATE COURT WHERE REMOVED ACTION WAS PENDING**

22 14. After the filing of this Notice of Removal, Dollar Tree will file a copy of this
23 Notice of Removal with the Clerk of the Superior Court of the State of Washington in and for
24 Pierce County where the above-captioned action is currently pending, as required by 28
25 U.S.C. § 1446(d).

26 **NON-WAIVER OF DEFENSES**

1 15. By removing this action from the Superior Court of the State of Washington in
2 and for Pierce County, Dollar Tree does not waive any defenses available to it or admit any of
3 the allegations in Plaintiff's complaint. Further, Dollar Tree reserves the right to amend or
4 supplement this Notice of Removal.

5 \\

6 \

7 WHEREFORE, Defendant Dollar Tree respectfully removes the above-captioned
8 action from the Superior Court of the State of Washington in and for Pierce County to the
9 United States District Court for the Western District of Washington.

10 DATED this 22nd day of July 2021.

11
12 DAVIS ROTHWELL
13 EARLE & XÓCHIHUA, PC

14 By /s/ Keith M. Liguori

15 Keith M. Liguori, WSBA No. 51501
16 Matthew K.T. Ishihara, WSBA No. 54333
17 Attorneys for Dollar Tree
18 701 5th Ave Suite 5500
19 Seattle, WA 98104
20 E: kliguori@davisrothwell.com
21 E: mishihara@davisrothwell.com

CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on this date she sent, via electronic mail and/or U.S Mail, a copy of the foregoing document for delivery to the following persons:

Counsel for Plaintiff

James Whitehead III, WSBA No. 6319
LAW OFFICE OF JAMES F WHITEHEAD,
PLLC
PO BOX 84567
Seattle, WA 98124
jim@jfw-law.com

Defendant Kittrich Corporation

Matthew R. Wojcik, WSBA #27918
Jean Y. Kang , WSBA#42074
BULLIVANT HOUSER BAILEY PC
925 4th Avenue, Suite 3800
Seattle, WA 98104
Matt.wojcik@bullivant.com
Jean.kang@bullivant.com

SIGNED at Seattle, Washington, on this 22nd day of July 2021

/s/ Tiarra Powells

Tiarra Powells Legal Assistant